

Fiscal Note

BILL # SB 1310

TITLE: ~~incompetent defendants; public safety guardianship~~
NOW: dangerous; incompetent person; evaluation;
commitment

SPONSOR: Barto

STATUS: Senate Engrossed

PREPARED BY: Morgan Dorcheus

Description

The bill would establish procedures for the courts to determine if a defendant is dangerous and incompetent to stand trial and may be committed to the Arizona State Hospital (ASH) for treatment. A jury would make this determination.

Estimated Impact

The fiscal impact of this bill is uncertain because it is difficult to predict how often a jury would commit dangerous defendants to ASH for treatment. This uncertainty is reflected in the range of estimates provided by the relevant agencies.

The Department of Health Services (DHS) estimates that its ongoing annual costs would be \$23.4 million in FY 2023, increasing to \$147.6 million by FY 2032. DHS assumes that 250 individuals will eventually require treatment under this statute.

The Arizona Health Care Cost Containment System (AHCCCS) estimates lower costs at \$11.9 million in FY 2023, increasing to \$68.8 million in FY 2032.

The Administrative Office of the Courts (AOC) expects the bill would generate 4-5 jury trials a year. Even if all jury trials resulted in commitment to ASH, the additional population would be 50 in 10 years. AOC did not provide an estimate of treatment costs. With 50 individuals, we would project an eventual annual operating cost of \$15.0 million.

We expect that additional facilities may be needed to meet the requirements of the bill. DHS and AHCCCS estimate the cost of construction for new facilities to provide these services would be approximately \$135.6 million. Under the AOC assumptions of 4-5 trials per year, a smaller facility with up to 50 beds could be needed at a cost of approximately \$27.1 million.

Costs to the counties may also increase to pay for mental health experts and court-ordered evaluations. This impact cannot be determined in advance.

Analysis

Federal and state law requires that persons accused of committing a crime be sufficiently competent to assist in their own defense and understand the criminal trial proceedings against them. Some persons with a serious mental illness do not meet the criteria for competency at the time of their arrest. Such persons must be treated in a restoration to competency (RTC) program at ASH or other treatment facility. If after 21 months of treatment an individual in the RTC program is deemed non-restorable, the courts currently have the following options: 1) remand the defendant to ASH for civil commitment proceedings; 2) appoint a guardian for the defendant; or 3) dismiss the charges and release the defendant from custody.

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Retroactive to January 1, 2022, the bill would establish procedures for the courts to determine if a defendant who has been deemed non-restorable after treatment in an RTC program is dangerous. If a jury finds a non-restorable defendant to be dangerous, the court would be required to order the defendant to receive education, care, supervision, and treatment at ASH until the defendant is found to be competent to stand trial or no longer dangerous. While at ASH for treatment, the court would be required to maintain jurisdiction over the defendant. The bill also sets requirements for medical expert evaluations, hearing timeframes, review of the defendant's competence, and petitions for discharge or conditional release to a less restrictive alternative.

The bill would require AHCCCS to determine the extent to which incompetent dangerous defendants are eligible for private or public benefits and would make AHCCCS responsible for all remaining costs associated with involuntary commitment and any transportation of a committed defendant to and from a medical facility. In addition, the bill would allow the courts to require supervision by AHCCCS as a condition of release to a less restrictive alternative, and would require AHCCCS to notify the Department of Public Safety of a defendant's conditional release or discharge from ASH.

Some incompetent dangerous individuals are likely already receiving court-ordered treatment through Arizona's civil commitment statutes, which allows such treatment for individuals deemed a "danger to others" and who have a mental disorder. Because the legal rules for court-ordered treatment are complex, it is difficult to determine whether the bill would make courts more likely to order inpatient treatment for individuals with mental illness compared to the existing civil commitment process.

To provide treatment for the state's non-restorable dangerous defendants, DHS estimates that annual costs would be \$23.4 million in FY 2023, increasing to \$147.6 million by FY 2032. These estimates assume that up to 250 of non-restorable defendants would be deemed dangerous and would be higher acuity than existing ASH patients, requiring a higher level of treatment and restorative staff. AHCCCS separately estimated ongoing costs of \$16.8 million in FY 2023, increasing to \$68.8 million by FY 2032. These estimates are highly speculative.

According to a study conducted by Arizona State University and presented to the Non-restorable and Dangerous Legislative Study Committee in December 2016, approximately 200 defendants are deemed non-restorable in Arizona per year. It is difficult to determine how many non-restorable defendants who are not currently committed via the civil commitment statutes would be deemed dangerous by the courts under the bill's involuntary commitment procedures, as the data used in this study is incomplete. AOC expects the bill to add 4-5 trials per year. If all trials resulted in commitment to ASH for treatment, there would be 50 additional patients in 10 years. Based on current per diem costs for the ASH Restoration to Competency program, we estimate annual treatment costs for 50 patients would cost approximately \$15.0 million. In contrast, the DHS estimate assumes up to 250 defendants would be deemed dangerous within 10 years at a cost of \$147.6 million. Costs would ultimately depend on how often a jury deems non-restorable defendants as dangerous, the staffing levels required for treatment, and the discharge rate for the population.

ASH currently provides 143 beds in its forensic unit, which serves patients in its RTC program and post-trial patients ruled guilty except insane, not guilty by reason of insanity, or patients with a plan for conditional release into the community. In FY 2021, the forensic unit had an average daily census of 113, or 30 available beds. To the extent that the non-restorable dangerous population exceeds available beds, ASH would need additional capacity to meet the bill's requirements for treatment. DHS reports that it would need to construct a new 250-bed facility at a cost of \$135.6 million. Using AOC's estimates of up to 50 patients in 10 years, we estimate costs for a 50-bed facility would cost approximately \$27.1 million. Facility requirements would also depend on how often a jury deems non-restorable defendants as dangerous and the discharge rate.

Local Government Impact

AOC does not expect the costs of additional trials to be significant. Costs to the counties would also increase to the extent that they are required to pay for mental health experts and court-ordered evaluations associated with jury trials. The impact cannot be determined in advance.